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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

DEPT. OF TRANSPORTATION
DOCKET SECTION

96 NOV 12 PM 3:03

Application of)

CHINA AIRLINES, LTD.)

for an exemption pursuant to 49)
U.S.C. §40109(c) (Taipei-Chicago/)
Taipei-Miami Combination Service))

Docket OST-96-1308 -5

Docket OST-96-1309 -4

Joint Application of)

AMERICAN AIRLINES, INC.)

and)

CHINA AIRLINES, LTD.)

for reciprocal code-sharing)
pursuant to Parts 207 and 212 of)
the Economic Regulations)

Undocketed

Applications of)

CONTINENTAL AIRLINES, INC.)

and)

CHINA AIRLINES, LTD.)

for statements of authorization)
pursuant to 14 CFR Parts 207 and)
212)

Undocketed

CONSOLIDATED ANSWER OF UNITED AIR LINES, INC.
AND MOTION FOR LEAVE TO FILE AFTER TIME HAS EXPIRED

DATED: November 12, 1996

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Counsel for
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DATED: November 12, 1996

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.

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DATED: November 12, 1996

CONSOLIDATE ANSWER OF UNITED AIR LINES, INC.
AND MOTION FOR LEAVE TO FILE AFTER TIME HAS EXPIRED

United Air Lines, Inc. ("United") submits the following consolidated answer to the above-captioned applications of China Airlines, Ltd. ("CAL"), American Airlines, Inc. ("American") and Continental Airlines, Inc. ("Continental"). United opposes the

Department's grant of these pending applications and requests that they be deferred or dismissed without prejudice until such time as the Taiwan authorities allow United to code share with Thai International Airlines ("THAI") on services between the U.S. and Thailand via Taiwan. In support of its position United submits the following:

1. Pursuant to Rule 6(c) of the Department's Rules of Practice, United requests leave to file this answer after the time for filing has expired. United's opposition to these applications is based on the decision of the Civil Aeronautics Administration of Taiwan ("CAA") to deny the request of United and THAI to code share on each other's flights between the U.S. and Thailand via connections at Taipei. That denial was received on October 30, 1996 by United's offices in Taipei. A copy of the letter is attached. Prior to receipt of that letter, United assumed that Taiwanese authorities would have no objection to these services in circumstances where Taiwanese carriers, such as CAL, were seeking extrabilateral approval of code shares involving the carriage of traffic to and from the U.S. in conjunction with U.S. carriers and had previously been involved with U.S. carriers in such operations.^{1/} In these circumstances,

^{1/} Neither United nor THAI is selling local traffic to or from Taipei under its own designator code on flights operated by the other carrier. Such code-share traffic is merely transitting Taipei between the U.S. and Thailand where it connects to flights
(continued...)

United requests leave to file this answer after the time for filing has expired to address this new and previously unanticipated development relating to U.S. carrier code-share services in Taiwan.

2. In its October 30, 1996, letter, the CAA notes that that country's existing agreements with the U.S. and Thailand contain no provision for code shares with third-country carriers. Because of this, the CAA concludes that neither United nor THAI "has the necessary authority to operate code-share services through Taipei."

There are likewise no provisions in the applicable agreements between U.S. and Taiwan authorities allowing CAL to code share with either American or Continental. Moreover, CAL lacks any basis in those agreements to offer combination services to the U.S. points of Miami or Chicago in conjunction with American's services to those points, as requested in CAL's pending exemption applications. The CAL/American and CAL/Continental code-share applications are, in these circumstances, extrabilateral.

1/(...continued)
operated by United and THAI. In these circumstances, it was not deemed necessary to obtain any formal "approval" by the Taiwanese authorities for these services. United, however, notified those authorities of its code-share services between the U.S. and Thailand via Taipei only to be informed that it would not be allowed to offer these services.

3. United opposes any favorable action being taken on the pending CAL/American or CAL/Continental applications until the Taiwan authorities are prepared to allow United and THAI to code share via Taipei on their services between the U.S. and Thailand. Comity and reciprocity are lacking where the Taiwanese authorities will not allow United and THAI to code share because of the lack of a bilateral agreement governing such services. In these circumstances, there is no basis to approve the CAL/American and CAL/Continental code shares or CAL's exemptions to serve Miami and Chicago, which are also outside the scope of the applicable bilateral agreements.

The Department has previously deferred action on extrabilateral code-share applications involving U.S. and foreign carriers where a foreign carrier's homeland is denying U.S. carriers the right to engage in third-country code sharing pending an agreement on code sharing with such carrier's homeland. Such action was taken in the case of American's code shares with LOT and South African Airways until the Polish and South African governments entered into agreements on code sharing between U.S. and third-country carriers. Similarly, approval of applications by United/Lufthansa to code share to third countries was deferred until the German government entered into an agreement to allow other U.S. carriers to code share with third-country carriers via Germany. Orders 94-1-19 and 94-4-43. Indeed, the Department is currently deferring action on

extrabilateral code sharing between American and El Al Israel Airlines in circumstances where the Israeli government is denying U.S. carriers the right to code share to Israel with third-country carriers.

Similar action is now called for with respect to Taiwanese carriers. Any failure by the Department to apply the same policy to Taiwan as it has to other countries which have denied U.S. carriers code-share access with their third-country partners would be viewed as an invitation to protectionism. Until the Taiwan authorities are prepared to agree to approve U.S. carrier code shares with third-country carriers, their own carriers should not be allowed to enjoy extrabilateral code-share rights involving services with U.S. carriers.

Respectfully submitted,



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DATED: November 12, 1996
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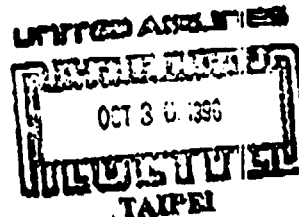
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MINISTRY OF TRANSPORTATION AND COMMUNICATIONS
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Mr. Warren Gerig
General Manager-Taiwan
United Airlines
12F No. 2, Jen Ai Road, Sec. 4
Taipei

October 30, 1996



Dear Mr. Gerig:

Reference is made to your letter dated October 14, 1996 informing us of your proposal to initiate codeshare services with Thai Airways International on October 19, 1996.

Please be advised that according to the directions from our Ministry of Transportation and Communications on international third-country codeshare applications, it shall be subject to the authority under the relevant bilateral air service agreements.

Our existing bilateral agreements with USA and THAI both have no provision granting such codeshare rights to the designated airlines. Therefore, we decide neither United Airlines nor Thai Airways International has the necessary authority to operate codeshare services through Taipei.

Your attention to this matter will be highly appreciated.

Sincerely yours,

CHANG KUO-CHENG

Chang Kuo-cheng
Acting Director General

c.c. Ministry of Transportation and Communications, R.O.C.
Thai Airways International
China Airlines Ltd.
EVA Airways Corp.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Consolidated Answer of United Air Lines, Inc. and Motion for Leave to File After Time Has Expired on all persons named on the attached Service List by causing a copy to be sent via first class mail, postage prepaid.


Brenda Gardner

DATED: November 12, 1996

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